

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JACK HARRIS,)
)
Plaintiff,) 4:06CV3017
)
v.)
)
DARCY OLIVER, in her) MEMORANDUM AND ORDER
individual and official)
capacity, and DOUG DILTZ, in)
his individual and official)
capacity,)
)
Defendants.)
)

On February 14, 2008, the United States Bankruptcy Judge filed a Report and Recommendation (filing 89) which recommended that the reference of this matter to the United States Bankruptcy Court be withdrawn as to plaintiff's litigation against defendant Diltz in his official and individual capacities, but that plaintiff's litigation against defendant Oliver be stayed.

The plaintiff has filed an "objection" to this report and recommendation. The objection does not dispute the bankruptcy court's factual findings or conclusions of law as applied to this case. I find that the report and recommendation should be adopted and, to the extent the plaintiff's filing 90 could be considered an objection, that objection should be denied.

The plaintiff's objection argues that his lawsuit against Oliver is intertwined with his case against Diltz, and pursuing litigation in a piecemeal fashion as to these defendants will cause unnecessary costs. He is reportedly "willing to await trial in this matter until the automatic stay granted to Oliver, pursuant to 11 U.S.C. 362, is no longer in effect." Filing 91,

p. 2. Pursuant to Rule 42 of the Federal Rules of Civil Procedure, the plaintiff seeks an order staying this litigation until the suit can proceed against both Diltz and Oliver.

The court interprets the plaintiff's "objection" to the bankruptcy court's report and recommendation as a motion to stay the proceedings in this forum pending further rulings regarding lifting the stay of plaintiff's case as to defendant Oliver, or final resolution of defendant Oliver's bankruptcy proceeding.

IT THEREFORE HEREBY IS ORDERED:

1. The report and recommendation of the United States Bankruptcy Judge, filing 89, is adopted. As to plaintiff's claim against defendant Diltz, the reference of this matter to the United States Bankruptcy Court is withdrawn. As to plaintiff's claim against defendant Oliver, this action is stayed.
2. On or before March 14, 2008, the plaintiff and defendant Diltz, in his official and individual capacities, shall confer concerning whether the court should stay further progression of this case pending further rulings of the bankruptcy court regarding lifting the stay of plaintiff's case as to defendant Oliver, or final resolution of defendant Oliver's bankruptcy proceeding. Based on the outcome of that discussion:
 - a. If the parties agree that this case should be stayed in this forum, they shall file a joint motion to stay on or before March 14, 2008.
 - b. If the parties do not agree on whether this case should be stayed, the plaintiff shall file his brief in support of his motion to stay on or before March 21, 2008, with any opposing brief filed in accordance with Nebraska Civil Rule 7.1(b). No reply brief shall be filed absent leave of the court for good cause shown.

DATED this 28th day of February, 2008.

BY THE COURT:

s/ *David L. Piester*

David L. Piester
United States Magistrate Judge